IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

OP.No. 10324 of 1999(D)

PETITIONER:

YASEEN CHARITABLE SOCIETY,
ALISSERI, 24-295, ALAPPUZHA, REP. BY ITS
PRESIDENT, MOHAMMED SHAW.

BY ADV. SRI.T.KRISHNANUNNI

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY CHIEF SECRETARY, GOVERNMENT SECRETARIAT, TRIVANDRUM.**

2. **KERALA KHADI AND VILLAGE INDUSTRIES BOARD REPRESENTED BY ITS SECRETARY, TRIVANDRUM.**

3. **DISTRICT RURAL DEVELOPMENT AGENCY, MALAPPURAM REPRESENTED BY THE PROJECT OFFICER.**

4. **KHADI AND VILLAGE INDUSTRIES COMMISSION, IRLA ROAD, VILE PARLE-WEST, MUMBAI REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER.**

5. **PROJECT OFFICER, KHADI BOARD, MALAPPURAM.**

***ADDL.R6 TO R9 ARE IMPLEADED:**

R6. DEPUTY COLLECTOR (RR), ALAPPUZHA.

**R7. DEPUTY COLLECTOR (RR),
KOLLAM.**

**R8. DEPUTY COLLECTOR (RR),
THRISSUR.**

**R9. DEPUTY TAHSILDAR (RR),
AMBALAPUZHA TALUK.**

(*ADDL.R6 TO R9 ARE IMPLEADED AS PER ORDER DTD. 29/05/2007 IN I.A.NO.6446/07)

BY ADV. SRI.K.P.HARISH, SC, KHADI BOARD for R2 & R4
BY GOVERNMENT PLEADER SRI. BEJOY CHANDRAN for R1,R3,R5 and R6 to R9

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 08/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

ORDER ON C.M.P.NOS.16927, 33117/1999 AND I.A.NO.12452/2006 IN O.P.NO.10324/1999

DISMISSED

8/10/2007 **SD/- V.GIRI, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE LETTER ISSUED FROM THE COMMISSION'S OFFICE , TRIVANDRUM TO THE PETITIONER DTD. 22/2/95.**

EXT.P2: **COPY OF THE PROCEEDINGS OF THE BOARD DTD. 28/03/95.**

EXT.P3: **COPY OF THE LETTER WRITTEN BY THE DIRECTOR OF THE COMMISSION TO THE BOARD DTD. 19/04/95.**

EXT.P4: **COPY OF THE LETTER ISSUED BY THE DIRECTORATE OF ECONOMIC RESEARCH OF THE COMMISSION TO THE PETITIONER DTD. 23/05/1995.**

EXT.P5: **COPY OF THE LETTER ISSUED BY THE PETITIONER TO THE HON'BLE MINISTER OF INDUSTRIES AND THE CHAIRMAN OF THE KERALA KHADI AND VILLAGE INDUSTRIES BOARD DTD. 1/08/95.**

EXT.P6: **COPY OF THE LETTER ISSUED BY THE DRDA TO THE PETITIONER DTD. 19/10/95.**

EXT.P7: **COPY OF THE NOTE PLACED BEFORE THE CHAIRMAN OF THE BOARD BY THE VICE CHAIRMAN ON 28/10/95.**

EXT.P8: **COPY OF THE LETTER ISSUED BY THE COMMISSION'S OFFICE TO THE SECRETARY OF THE BOARD DTD. 14/11/95.**

EXT.P9: **COPY OF THE REPORT SUBMITTED BY THE CO-ORDINATOR OF THE RPDS BLOCK WANDOOR BEFORE THE STATE DIRECTOR OF THE KHADI COMMISSION DTD. NIL.**

EXT.P10: **COPY OF THE LETTER WRITTEN BY THE COMMISSION'S STATE OFFICE TO THE DIRECTOR, ECONOMIC RESEARCH OF THE COMMISSION'S BOMBAY OFFICE DTD. 13/12/1995.**

EXT.P11: COPY OF THE PROCEEDINGS OF THE 2ND RESPONDENT DTD. 25/01/96.

EXT.P12: COPY OF THE LETTER WRITTEN BY THE PETITIONER TO THE MINISTER FOR INDUSTRIES AND SOCIAL WELFARE DTD. 29/06/96.

EXT.P13: COPY OF THE LETTER ISSUED BY THE PETITIONER TO THE BOARD DTD. 23/07/96.

EXT.P14: COPY OF THE LETTER ISSUED BY THE PETITIONER TO THE KHADI AND VILLAGE INDUSTRIES COMMISSION TRIVANDRUM DTD. 23/07/96.

EXT.P15: COPY OF THE LETTER ISSUED BY THE BOARD TO THE PETITIONER DTD. 19/11/96.

EXT.P16: COPY OF THE NOTICE ISSUED BY THE PROJECT OFFICER, KHADI AND VILLAGE INDUSTRIES BOARD, MALAPPURAM TO THE PETITIONER DTD. 15/07/97.

EXT.P17: COPY OF THE REPLY NOTICE SENT BY THE PETITIONER TO THE PROJECT OFFICER, KHADI AND VILLAGE INDUSTRIES BOARD, MALAPPURAM DTD. 4/08/97.

EXT.P18: COPY OF THE REGISTERED NOTICE SENT BY THE BOARD TO THE MRS. RAMLATH BEEVI DTD. NIL.

EXT.P19: COPY OF THE REPLY SENT BY THE PETITIONER TO THE REGISTERED NOTICE DTD. 21/11/98.

EXT.P20: COPY OF THE GUIDELINES ISSUED BY THE COMMISSION FOR THE PREPARATION OF THE PROJECT FOR THE IDENTIFIED BLOCKS DTD. NIL.

EXT.P21: COPY OF THE JUDGMENT IN O.P.1719 OF 1999 DTD. 10/02/99.

EXT.P22: COPY OF THE ORDER OF THE 2ND RESPONDENT DTD. 26/03/99.

EXT.P23: COPY OF THE TERMS AND CONDITIONS DTD. NIL.

EXT.P24: COPY OF D.O.LETTER NO.R 19011/9/94 – IRD II FROM JOINT SECRETARY, MINISTRY OF RURAL DEVELOPMENT TO SECRETARIES OF ALL STATE GOVERNMENTS.

EXT.P25: COPY OF THE NOTICE ISSUED BY THE DEPUTY TAHSILDAR (RR), AMBALAPUZHA DTD. 10/05/2007.

RESPONDENT'S ANNEXURE:

ANNEXURE R1(A): COPY OF ENQUIRY REPORT.

2ND RESPONDENT'S EXHIBITS:

EXT.R2(A): COPY OF THE LETTER DTD. 14/07/95

EXT.R2(B): COPY OF THE PROCEEDINGS.

EXT.R2(C): COPY OF THE LETER DTD. 14/11/98.

EXT.R2(D): COPY OF THE LETTER DTD. 2/01/99.

/TRUE COPY/

P.A.TO JUDGE

KSS

V. GIRI ,J.

O.P.NO.10324 of 1999

Dated this the 8th day of October, 2007

JUDGMENT

One Yaseem Charitable Society, stated to be a Society registered under the Travancore Cochin Literary Scientific and Charitable Societies Act represented by its President Sri.Mohammed Shaw, is the petitioner in this writ petition. The Society was formed in the year 1989 and it contends that one of its prime objects is to train and assist persons belonging to the economically weaker sections of the Society for finding employment. Khadi and Village Industries Commission, the 4th respondent had launched a programme in 1994 deciding to identify 125 blocks in the country for development of Khadi and Village Industries, to give employment in that area to 1000 persons per block. Apparently the programme of the Commission was implemented in two blocks in Kerala, one of them being Vandoor Block in Malappuram District. It seems that the petitioner was an implementing agency for the project in Vandoor Block. Funds were to be made available by the 4th respondent Commission, through the Khadi and Village Industries Board. The Board was to obtain the amount from the 4th respondent Commission and give the amount to the implementing agency. Though a larger amount could be given to an implementing agency like the petitioner, in so far as the present case is concerned, an amount of Rs.16,05,000/= was disbursed to the petitioner. Terms and conditions were imposed at the time of disbursal of the funds as per Ext.P2 as also Ext.P11. As part of the

conditions so imposed, deed of hypothecation was executed by the Society. The members of the Executive Committee of the Society had also personally undertaken a liability for repayment of the loan. The extent to which such personal liability was undertaken, by the members of the Society or the period for which such personal liability remained in force, are matters which are in dispute in two other writ petitions which have been filed by the individual members of the governing body of the Society. Those two writ petitions are being separately dealt with.

2. In so far as the present writ petition filed by the Society is concerned, admittedly, there is default in repayment of the loan. The amount was recalled as per Ext.P16 notice. There are allegations of diversion of funds as also misappropriation, by the members of the Society as such. Objections were filed by the members of the Society on behalf of the Society to the notice requiring repayment of the loan. Such objections were also considered and it is thereafter that it was disposed of under Ext.P22 proceedings.

3. Several orders were passed by this Court at the interim stage inter alia for payment of a portion of the amount. No amount was paid in compliance with the interim directions. On 23.8.2006,by an interim order it was directed that if an amount of Rs.5 lakhs is not paid on or before 30.8.2006, there will be a direction to the 5th respondent and recovery authority to proceed against the assets of the Society and against the personal assets of the President and Office bearers who have executed

personal bonds. Respondents 2 and 5 were also directed to consider filing of criminal complaints against the President of the Society and persons involved in the forgery, cheating etc. It is admitted that no amount has been paid pursuant to the interim order as such.

4. Vigilance investigation is pending against the President and members of the Society. Though the same is not the subject matter of the present writ petition, what is noteworthy is that substantial amounts were received by the petitioner Society and apparently the entire project itself was abandoned half way in the year 1996. The principal liability, suffered by the petitioner Society is not a matter in dispute though there are contentions to the effect that the project would have stayed afloat had further amounts been disbursed to the petitioner Society. This is a moot question. Receipt of an amount of Rs.16,05,000/= and the fact that there is admittedly default in paying any amount towards repayment of the financial facility availed by the petitioner from the 2nd respondent are not matters which are in dispute at all. In other words, receipt of the amount and non-payment of the same are admitted facts. It is true that the petitioner Society has raised a contention that further amounts should have been paid and the Society had actually expended some amount for the implementation of the project but the project could not take off because of certain other extraneous factors. As on this date, an amount of Rs.36,87,890/= is due from the Society. But not a single pie has been repaid, in spite of the repeated orders passed by this Court.

5. I am not inclined to exercise the discretionary jurisdiction of this Court under Article 226 of the Constitution of India in favour of such a recalcitrant and persistent defaulter. Nor can this Court go into the disputed questions of facts that are urged by the petitioner Society to resist the enforcement of the demand made by the 2nd respondent.

6. If the petitioner has any case that it had expended any portion of the amount received by it from the 2nd respondent Board, for the implementation of the Project, it may urge the same in an appropriately instituted suit or other proceedings, if so advised and if permissible in law.

In the circumstances, I find no reason to interfere in this writ petition and the same stand dismissed.

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V. GIRI, JUDGE

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